

FILED
COURT OF APPEALS
DIVISION II

2014 JUN 19 AM 9:04
No. 43294-3-II

STATE OF WASHINGTON

BY _____

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

KEITH PELZEL,

Appellant,

v.

NATIONSTAR MORTGAGE, LLC; QUALITY LOAN SERVICE
CORPORATION OF WASHINGTON; HOMECOMINGS FINANCIAL
NETWORK, INC.; MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.,

Respondents,

APPELLANT REPLY BRIEF

Keith Pelzel, Pro-Se
1121 Harrison Ave #500
Centralia, WA 98531
(253) 208-9078

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INTRODUCTION

Does the Washington State Statute RCW 61.24.030(7)(a) require the Beneficiary to be both the owner and holder of the promissory note for non-judicial foreclosure? Nationstar Mortgage, LLC (hereinafter "Nationstar") would have you believe that the answer is "no". Nationstar would have you believe that the second part of RCW 61.24.030(7)(a) is more important than the first part.

Simply put, Nationstar, cannot comply with the first part of RCW 61.24.030(7)(a) and is trying to do anything it can to show it has standing to non-judicially foreclose using the Deed of Trust Act (Washington State Statute RCW 61.24).

LEGAL ARGUMENT

Let us review some of the facts of this case.

1) DID NATIONSTAR VIOLATE RCW 61.24.030(8)(I)

Nationstar listed itself as owner of the "Note" in the "Notice of Default" (CP 17). And now Nationstar admits that Fannie Mae is the owner of the note. This is a violation of RCW 61.24.030(8)(I).

2) DID MERS USE FALSE STATEMENTS

Mortgage Electronic Registration Systems, Inc (MERS) records an "Assignment of Deed of Trust" (CP 126-127). In the "Assignment of Deed of Trust" MERS pretends to transfer the Deed of Trust and Promissory Note to Nationstar as Nominee for HOMECOMINGS FINANCIAL NETWORK, INC (Homecomings). Yet from Nationstar own documents and "BAIN" we know that MERS never held the promissory note, nor did Homecomings have an interest in the promissory note at the time that MERS "supposedly" assigned the Deed of Trust with the promissory note. The whole document was a fraud. Nationstar would have you believe that it does not matter. There argument being that there is no requirement to record such documents. And that argument fails when Nationstar appointed "Quality Loan service Corporation of Washington" (QLSCW) as Trustee (though I do not believe this "appointment" was legal). At that point, Nationstar was relying on a fraudulent document (CP 126-127 "Assignment of Deed of Trust") to show that they had standing and authority to appoint QLSCW as Trustee. There is no other document that gives Nationstar authority to act to appoint QLSCW as Trustee. Nationstar chose QLSCW to act as "Trustee". Nationstar could not appoint QLSCW until Nationstar was appointed as the "alleged Beneficiary" recorded in the Pierce County Recorder's office. Nationstar used the

fraudulent "Assignment of Deed of Trust" to appoint QLSCW even though QLSCW acted before Nationstar in appointing itself as Trustee.

3) DOES NATIONSTAR "*DECLARATION*" MEET THE
REQUIREMENTS OF RCW 61.24.030(7)(a)

Nationstar would have you believe that the "Declaration" (CP 162 and 176) sent to QLSCW does meet the requirements of RCW 61.24.030(7)(a). Appellant believes that said "Declaration" does not meet the requirements of RCW 61.24.030(7)(a) for the following reasons.

1. There is no name ever listed as to who is the owner. In fact, Nationstar conspicuously forgets to list the name of the real owner of the note in all its documents.
2. There is no supporting documentation that would give Nationstar the right to act as an agent of Fannie Mae. What proof is there that Nationstar has the right to act, as an agent of Fannie Mae (assuming that Fannie Mae is the rightful owner and not a Trust or other entity). There is no documentations from Fannie Mae at all. That leaves a lot to the imagination.
3. Nationstar, by declaration (CP 162 and 176), spoke for the owner of the note. In the declaration, Nationstar declared that "*4) The note has not been assigned or transferred to any other person or entity*". How can Nationstar

declare something for anyone else? That would be hearsay. Again, assuming that Fannie Mae is the rightful owner, only Fannie Mae could declare what has happened to the note and what assignments were made during the time that Fannie Mae owned the note. Nationstar may or may not be privileged to that information.

4. What proof did this Declaration (CP 162) show to QLSCW that Nationstar was the owner of the note. Quick answer... none. RCW 61.24.030(7)(a) requires that "*The trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured the Deed of Trust.....*" QLSCW should never have accepted the Declaration as meeting the requirements of RCW 61.24.030(7)(a).

5. Respondents go to great lengths to try to prove that as "holder of the note" that Nationstar has the right to foreclose (using QLSCW). But what Respondents forgets is that the Washington State Supreme Court has already ruled, many times, that "*lenders must strictly comply with the statutes, and courts must strictly construe the statutes in the borrowers favor*". Appellant is simply asking that RCW 61.24.030(7)(a) be enforced, the whole statute.

RCW 61.24.030(7)(a) is simply a two part statute. The first part requires the Beneficiary to be the owner of the promissory note; and the second part requires the Beneficiary to send a "Declaration" stating that they are

the holder of the note. It is actually very simple, be the owner and holder of the note and send declaration.

6) When the Beneficiary is both the owner and holder of the note, as required in RCW 61.24.030(7)(a), there is no need to use the UCC (RCW 62A *et seq*). By meeting RCW 61.24.030(7)(a) the use of the UCC is pointless. But because Nationstar's business model does not work with the Deed of Trust Act, Nationstar is trying to expand the use of the Deed of Trust Act by changing the interpretation of RCW 61.24.030(7)(a). MERS business model also did not work in the State of Washington. The Washington State Supreme Court recently found in *Bain "The MERS system may be inconsistent with our second objective when interpreting the deed of trust act:"*. The MERS business model system did not fit and now Nationstar business model also does not fit into the Deed of Trust Act by failing to meet RCW 61.24.030(7)(a).

7) Nationstar claims that they are the "Holder of the note"(Whether or not that is true remains to be seen), but never the owner of the note in all there court documents. Assuming for a second that Nationstar is the holder of the note, how does that "*promote the stability of land titles*" without the owner of the note also sending in a "declaration". Does the owner lose his rights if the "holder of the note" forecloses without his consent? It does nothing but create a rabbit hole. In order to foreclose and promote the

stability of land titles the Beneficiary must be both the owner and holder of the note (RCW 61.24.030(7)(a). Nationstar never met this condition and QLSCW knew that.

8) Nationstar, with the help of MERS and QLSCW, has shown contempt for the Deed of Trust Act. Just recently in Snohomish County Court (case number 12-2-05605-4), Judge George N Bowden, also found that all three Respondents had violated the Deed of Trust Act. Judge N. Bowden was not impressed at all with the quality of fairness that QLSCW exhibited.

By not requiring that the beneficiary be both the owner and holder of the note this will create a rabbit hole allowing for an unknown amount of wrong doing. What will cause these Trustees to equally apply the duty of fairness and good faith? These Trustees have continually shown that they (as a whole) are not trust worthy and therefore cannot be trusted to act in the best interest of the grantor.

CONCLUSION

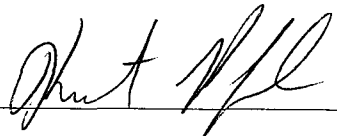
The concept of the Deed of Trust Act is not difficult to understand. When the statutes are followed and not stretched to the breaking point the Deed of Trust Act can reasonably provide for both the Grantor and the Beneficiary. But the old adage "give them an inch and they will take a

mile" truly applies to the beneficiary and the trustee. It seems that in the last 5-7 years both have been abusing their position.

Now Nationstar, in collusion with MERS and QLSCW, has shown contempt for the Deed of Trust Act by clearly violating many of the Deed of Trust Acts statutes. If allowed to continue, Nationstar and with the help of MERS and QLSCW, will continue to make a mockery of the Deed of Trust Act because there is no Judicial Oversight. To Nationstar, the end justifies the means. Appellant has shown enough evidence that clearly shows summary judgment was not appropriate. Appellant asks this court to overturn the summary judgment erroneously issued by the lower court and to award all costs. Thank you.

Dated: June 18, 2014

Respectfully Submitted,

By: 

Keith Pelzel

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that, on June 19, 2014, he caused the *APPELLANT REPLY BRIEF* to be served on Defendants/Respondents at the addresses listed below and in the manner shown:

Nationstar Mortgage LLC C/o McCarthy & Holthus, LLP Mary Stearns, Esq., WSBA #42543 108 1st AVE S, Suite 30 SEATTLE, WA 98104 PH: (206) 319-9100, FAX: (206) 780-6862	<input type="checkbox"/> Via hand delivery by ABC Legal messenger services <input checked="" type="checkbox"/> Via U.S. Mail, First Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via E-mail
QUALITY LOAN SERVICE CORPORATION OF WASHINGTON C/o McCarthy & Holthus, LLP Mary Stearns, Esq., WSBA #42543 108 1st AVE S, Suite 30 SEATTLE, WA 98104 PH: (206) 319-9100, FAX: (206) 780-6862	<input type="checkbox"/> Via hand delivery by ABC Legal messenger services <input checked="" type="checkbox"/> Via U.S. Mail, First Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via E-mail
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. C/o McCarthy & Holthus, LLP Mary Stearns, Esq., WSBA #42543 108 1st AVE S, Suite 30 SEATTLE, WA 98104 PH: (206) 319-9100, FAX: (206) 780-6862	<input type="checkbox"/> Via hand delivery by ABC Legal messenger services <input checked="" type="checkbox"/> Via U.S. Mail, First Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via E-mail

By 
Keith Pelzel, Pro Se